

Jason W. Estavillo (Bar No. 188093)
Ryan C. Griffith (Bar No. 286060)
LAW OFFICES OF JASON ESTAVILLO, PC
1330 Broadway, Suite 1030
Oakland, CA 94612
Telephone: (510) 982-3001
Facsimile: (510) 982-3002

Attorney for Marshall S. Sanders and Lydia O. Sanders Trustee
of the Marshall and Lydia Sanders Trust Dated April 20, 1990

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

MARSHALL S. SANDERS and LYDIA O. SANDERS AS TRUSTEE OF THE MARSHALL AND LYDIA SANDERS TRUST DATED APRIL 20, 1990.) Case No.: 8:15-cv-00935-AG-AS)) **RESPONSE TO OSC**

Plaintiff.)

vs.

BANK OF AMERICA, N.A.; WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2007-1; NATIONAL DEFAULT SERVICING CORPORATION, SELECT PORTFOLIO SERVICING, INC.; and DOES 1-20

Defendants

INTRODUCTION

1. Plaintiffs MARSHALL S. SANDERS and LYDIA O. SANDERS AS TRUSTEE OF THE MARSHALL AND LYDIA SANDERS TRUST DATED APRIL 20, 1990, through their attorney submits the following response to the Court's Order to Show Cause.

2. By and through Plaintiffs' attorney of record, Jason W. Estavillo, please accept my apologies for the oversight on multiple issues.

1 3. First, the Court is correct, this matter was previously before this Court when Defendant Bank
2 of America, N.A. filed a Notice of Removal on December 2, 2014. The Court then issued an Order
3 to Show Cause why that matter should not be remanded back to State Court.

4 4. On December 12, 2014, Bank of America filed their response to the Court's Order to Show
5 Cause whereby Bank of America stipulated to remand the matter back to the State Court.

6 5. The Court issued an Order of Remand on December 15, 2015. During the less than two
7 weeks this matter was under federal jurisdiction, Plaintiffs only filed a demand for jury trial.

8 6. Plaintiffs' counsel, when filing the present action simply had no recollection that this matter
9 had been removed to Federal Court and did not intentionally mean to mislead the Court.

10 7. Plaintiffs' counsel honestly forgot that Bank of America, N.A. had removed the case and
11 apologizes to the Court for this oversight. Plaintiffs' counsel will file an amended Civil Cover Sheet
12 attached hereto as Exhibit "A" with the Court's permission.

13 15 DIVERSITY

14 8. Plaintiff's complaint states that some Defendants are citizens of North Carolina, Arizona and
15 California. Unfortunately, that statement is incorrect. Instead, it should have stated "Defendants are
16 citizens of North Carolina, Arizona and South Dakota whereby the parties are completely diverse and
17 the amount exceeds \$75,000.00.

18 9. Again, I and my office take full responsibility for the confusion, while Wells Fargo Bank,
19 N.A. has long been in California its main office is a South Dakota. In fact, the Ninth Circuit Court of
20 Appeal in *Rouse v. Wachovia Mortgage, FSB* found that under 28 U.S.C. §1348, "a national bank is
21 'located' only in the state designated as its main office" On appeal held that Wells Fargo is only a
22 resident of South Dakota, its designated location for its main office. (See *Rouse v. Wachovia*
23 *Mortgage, FSB a Division of Wells Fargo, N.A* (2014) 747 F.3d 707
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10. Therefore it is the Plaintiff's position that there is complete diversity under 28 U.S.C. §1332

1 Dated: June 26, 2015

2 Respectfully submitted,

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4 /s/
5 Jason W. Estavillo
6 Attorney for Plaintiffs
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EXHIBIT A

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET AMENDED

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Marshall S. Sanders and Lydia O. Sanders as Trustee of the Marshall and Lydia Sanders Trust Dated April 20, 1990	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) Bank of America, N.A., et al.																																							
(b) County of Residence of First Listed Plaintiff <u>Orange</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Mecklenburg</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>																																							
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Law Offices of Jason W. Estavillo, PC 1330 Broadway, Suite 1030 Oakland, CA 94612 Telephone: 510-982-3001	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.																																							
II. BASIS OF JURISDICTION (Place an X in one box only.)																																								
<input type="checkbox"/> 1. U.S. Government Plaintiff	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)																																							
<input type="checkbox"/> 2. U.S. Government Defendant	<input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)																																							
III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only <i>(Place an X in one box for plaintiff and one for defendant)</i>																																								
Citizen of This State	PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4																																					
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5																																					
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6																																					
IV. ORIGIN (Place an X in one box only.)		6. Multi-District Litigation																																						
<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)																																				
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				MONEY DEMANDED IN COMPLAINT: \$ <u>1,000,000</u>																																				
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 U.S.C. §1332																																								
VII. NATURE OF SUIT (Place an X in one box only).																																								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">OTHER STATUTES</th> <th style="width: 15%;">CONTRACT</th> <th style="width: 15%;">REAL PROPERTY</th> <th style="width: 15%;">CIVIL RIGHTS</th> <th style="width: 15%;">IMMIGRATION</th> <th style="width: 15%;">PRISONER'S RIGHTS</th> <th style="width: 15%;">PROPERTY RIGHTS</th> </tr> <tr> <td style="padding: 5px;"> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. 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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET AMENDED

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court?

Yes No

If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.

STATE CASE WAS PENDING IN THE COUNTY OF		INITIAL DIVISION IN CACD IS
<input type="checkbox"/>	Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western
<input type="checkbox"/>	Orange	Southern
<input type="checkbox"/>	Riverside or San Bernardino	Eastern

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?

Yes No

If "no," skip to Question C. If "yes," answer Question B.1, at right.

B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.?

check one of the boxes to the right



B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)

check one of the boxes to the right



YES. Your case will initially be assigned to the Southern Division.
 Enter "Southern" in response to Question E, below, and continue from there.

NO. Continue to Question B.2.

YES. Your case will initially be assigned to the Eastern Division.
 Enter "Eastern" in response to Question E, below, and continue from there.

NO. Your case will initially be assigned to the Western Division.
 Enter "Western" in response to Question E, below, and continue from there.

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?

Yes No

If "no," skip to Question D. If "yes," answer Question C.1, at right.

C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?

check one of the boxes to the right



C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)

check one of the boxes to the right



YES. Your case will initially be assigned to the Southern Division.
 Enter "Southern" in response to Question E, below, and continue from there.

NO. Continue to Question C.2.

YES. Your case will initially be assigned to the Eastern Division.
 Enter "Eastern" in response to Question E, below, and continue from there.

NO. Your case will initially be assigned to the Western Division.
 Enter "Western" in response to Question E, below, and continue from there.

QUESTION D: Location of plaintiffs and defendants?

A.
Orange County

B.
Riverside or San
Bernardino County

C.
Los Angeles, Ventura,
Santa Barbara, or San
Luis Obispo County

Indicate the location(s) in which 50% or more of *plaintiffs who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)



Indicate the location(s) in which 50% or more of *defendants who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)



D.1. Is there at least one answer in Column A?

Yes No

If "yes," your case will initially be assigned to the
SOUTHERN DIVISION.

Enter "Southern" in response to Question E, below, and continue from there.

If "no," go to question D2 to the right.

D.2. Is there at least one answer in Column B?

Yes No

If "yes," your case will initially be assigned to the
EASTERN DIVISION.

Enter "Eastern" in response to Question E, below.

If "no," your case will be assigned to the WESTERN DIVISION.

Enter "Western" in response to Question E, below.

QUESTION E: Initial Division?

INITIAL DIVISION IN CACD

Enter the initial division determined by Question A, B, C, or D above:

Southern

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties?

Yes No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET AMENDED**IX(a). IDENTICAL CASES:** Has this action been previously filed in this court? NO YES

If yes, list case number(s): 8:14-cv-AG-AN (additional causes of action)

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court? NO YES

If yes, list case number(s): 8:14-cv-AG-AN

Civil cases are related when they (check all that apply):

A. Arise from the same or a closely related transaction, happening, or event;

B. Call for determination of the same or substantially related or similar questions of law and fact; or

C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

A. Arise from the same or a closely related transaction, happening, or event;

B. Call for determination of the same or substantially related or similar questions of law and fact; or

C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY**(OR SELF-REPRESENTED LITIGANT):** /s/

DATE: June 26, 2015

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

PROOF OF SERVICE

2 Re:	Sanders v. PNC Mortgage, et al.
3 Court:	Central District of California Case No.: 8:15-CV-00935-AG-AS
3 Represents:	Marshall S. Sanders and Lydia O. Sanders, et al.

4 I declare that I am over the age of 18, not a party to the above-entitled action; I am an employee of
 5 Law Offices of Jason W. Estavillo, PC whose business address is 1330 Broadway, Suite 1030, Oakland, CA
 94612.

6 On **June 26, 2015**, I served the following document(s) in the following manner(s):
 7

RESPONSE TO OSC

- 9 **MAIL:** By placing the document(s) listed below in a sealed envelope with postage thereon,
 10 in the United States mail at Oakland, California, addressed as set forth below.
- 11 **FACSIMILE:** By transmitted a true copy, via facsimile electronic equipment transmission
 (fax) to the office(s) of the addressee(s) at the fax number(s) below.
- 12 **FEDEX:** by placing true and correct copies thereof in sealed package(s) designated by
 13 Federal Express for that purpose, with the delivery fees paid or provided for by the sender,
 14 and delivering such package(s) to a box or other facility regularly maintained by Federal
 Express, or delivered to an authorized courier or driver authorized by Federal Express to
 receive documents, addressed as follows:
- 15 **ELECTRONIC SERVICE:** Via Pacer service

17 Conrad V. Sison LOCKE LORD LLP 300 South Grand Avenue, Suite 2600 Los Angeles, CA 90071 Telephone: 213-485-1500 Facsimile: 213-4851200 Attorney for Select Portfolio Servicing, Inc., Wells Fargo Bank, N.A., as Trustee, on Behalf of the Holders of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1 and National Default Servicing Corporation	18 Bank of America, N.A. C/O CT Corporation 818 West Seventh Street 2 nd Floor Los Angeles, CA 90017
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24 **(Federal)** I declare that I am employed in the office of a member of the bar of this court, at whose
 25 direction the service was made.

26 DATED: **June 26, 2015**



27
28 Maria Yolanda Lepe